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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,682	05/02/2001	Michael Sages	T8466399US	2919

26912 7590 05/26/2006

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CANADA

EXAMINER
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JOHNSTON, PHILLIP A

ART UNIT	PAPER NUMBER
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2881

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



## UNITED STATES DEPARTMENT OF COMMERCE

## U.S. Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

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Alexandria, Virginia 22313-1450

09/846, 682

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

20060516

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

## Commissioner for Patents

Regarding the submission of a 1.131 affidavit filed 11-12-2003, the Petersen (917) reference used in the 102 (e) rejection mailed 3-12-2003 is a U.S. patent that claims the rejected invention. An affidavit or declaration is therefore inappropriate under 37 CFR 1.131(a) when the reference is claiming the same patentable invention, see MPEP § 2306. If the reference and this application are not commonly owned, the reference can only be overcome by establishing priority of invention through interference proceedings. See MPEP Chapter 2300 for information on initiating interference proceedings. If the reference and this application are commonly owned, the reference may be disqualified as prior art by an affidavit or declaration under 37 CFR 1.130. See MPEP § 718.

The examiner has determined that by copying the claims of U.S. Patent No. 6,057,917 into the specification of application No. 09/846,682, filed 5-02-2001, the applicant has suggested an interference pursuant to 37 CFR 41.202(a). In so doing, the applicant has identified U.S. Patent No. 6,057,917 with which the applicant seeks an interference, in accordance with (a)(1) of 37 CFR 41.202; however, the applicant has failed to comply with the remaining paragraphs (a)(2) through (a)(6) of 37 CFR 41.202. For example;

The applicant failed to (1) identify all claims the applicant believes interfere, and/or (2) propose one or more counts, and/or (3) show how the claims correspond to one or more counts. See 37 CFR 41.202(a)(2) and MPEP § 2304.02(b).

The applicant failed to provide a claim chart comparing at least one claim of each party corresponding to the count. See 37 CFR 41.202(a)(3) and MPEP § 2304.02(c).

The applicant failed to provide a detailed explanation as to why applicant will prevail on priority. See 37 CFR 41.202(a)(4), (a)(6), (d) and MPEP § 2304.02(c).

The applicant failed to provide a chart showing where the disclosure provides a constructive reduction to practice within the scope of the interfering subject matter for each constructive reduction to practice for which the applicant wishes to be accorded benefit. See 37 CFR 41.202 (a)(6) and MPEP § 2304.02(c). Applicant is given ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this communication to correct the deficiency(ies). THE PROVISIONS OF 37 CFR 1.136 DO NOT APPLY TO THE TIME SPECIFIED IN THIS ACTION.

NIKITA WELLS  
PRIMARY EXAMINER

PJ  
5-16-2006

05/24/06